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THE POWERS OF THE COMMISSIONER IN BASEBALL

JONATHAN M. REINSDORF*

I. PRE-COMMISSIONER ERA

A. *Inception of Baseball*

Baseball began as an amateur sport sometime in the first half of the nineteenth century.¹ The first known amateur team, the Knickerbocker Baseball Club of New York, was formed in 1842.² Throughout the 1850s amateur baseball teams flourished throughout the east coast of America.³ As more teams appeared the public became more interested in the game.⁴ With the advent of spectator gambling, it was clear that baseball was becoming a commercial activity.⁵

As commercialism set in, baseball teams looked for different ways of improving attendance.⁶ At the same time, promoters understood the potential for making a profit.⁷ In the 1860s, some baseball clubs began secretly paying players in order to acquire the better players.⁸

In 1869, the Cincinnati Red Stockings became the first professional baseball club when it openly paid its players.⁹ The Red Stockings enjoyed tremendous financial success and, soon, others professional baseball clubs appeared.¹⁰ For the next 30 years competition was fierce over who was going to reap the financial rewards that baseball had to offer.

* The author would like to thank Professor Stephen B. Goldberg of the Northwestern University School of Law and Samuel Fifer, Esq. of the law firm Sonnenschein Nath & Rosenthal for their assistance in the creation of this article.

1. HAROLD SEYMOUR, *BASEBALL: THE EARLY YEARS* 3-12 (1960). The exact date of the start of baseball is in much dispute.

2. *Id.* at 15.

3. *Id.* at 23-28.

4. *Id.* at 29.

5. *Id.*

6. *Id.* at 47.

7. *Id.*

8. *Id.* at 47-48.

9. *Id.* at 56. In 1867, the people of Cincinnati were bitter when the Washington Nationals, who happened to be on tour, decisively beat the Red Stockings. Many felt that Cincinnati must have a winning team, even if that meant paying the players. Subsequently, Harry Wright assembled an all-professional baseball team. *Id.*

10. *Id.* at 57-59.

Teams which were financially strong stole players from other teams by offering them higher salaries.¹¹ Those teams who could not afford to do so suffered and faced financial destruction if they got involved with the bidding wars.¹² As a result, the richer owners built teams that could not be beaten by the poorer owners.¹³ Yet, because of the lack of competition, the richer teams had difficulty getting spectators to attend their games.¹⁴

This is an important point because it underlies the difference between baseball and other businesses. In most industries, a company will benefit when it has no competition. Unlike most businesses, though, no baseball team can survive without the existence of its competitors.

Realizing this dynamic of baseball, eight teams formed the National League of Professional Baseball Clubs.¹⁵ However, these eight teams did not want any competition from teams not in their league.¹⁶ When the non-league teams could not gain access to the National League, some started rival leagues.¹⁷

Over the next two decades, the National League waged war against any league that attempted to share in its wealth.¹⁸ When a rival league could not be destroyed, the National League would agree to peace in exchange for some control.¹⁹ However, when the National League could, it would dispose of the peace agreements and leave the rival league to fold.²⁰

When the cheating, lying, coercion and conspiring was over, the National League had established a virtual monopoly over professional baseball. However, it had done so at a high cost.²¹ While it no longer had to worry about getting into bidding wars over its players, its teams

11. *Id.* at 75.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 78-80. The formation took place at a meeting on February 2, 1876. *Id.* at 80. At this meeting the teams adopted a league constitution. The constitution stated that the teams had a desire to promote each other's interests. *Id.* at 80.

16. *Id.* at 94.

17. *Id.* at 99.

18. *Id.* at 94-103, 135-71.

19. *Id.* at 135-71. For example, a league called the International Association of Professional Baseball Players was formed. *Id.* at 99. The National League could not initially get rid of the league, so it signed a pact with the new league called the "League Alliance." *Id.* at 100.

20. *Id.* at 145-79, 249-60, 309-19. The National League abolished the "League Alliance" five years later when it became clear that the International League was no longer any kind of threat. *Id.* at 10.

21. *Id.* at 266.

were heavily in debt.²² Subsequently, the National League teams began slashing players' salaries to lower their debt.²³ The players became very angry over this.²⁴

In 1901, another league threatened the National League's monopoly over baseball.²⁵ The old Midwestern League, under the leadership of Ban Johnson, had changed its name to the American League.²⁶ The American League capitalized on the National League players' anger and began paying higher salaries to the best players in the National League.²⁷ Immediately, the American League was successful in stealing players from the National League.²⁸ By 1902, the American League had a higher season attendance than the National League.²⁹

It was clear to the National League that it could not win the war with the American League.³⁰ Thus, in December of 1902, the National League asked the American League for a peace treaty.³¹ In early 1903, the two leagues ended the bidding war and established a single ruling committee, the National Commission (Commission).³²

B. National Commission

The National Commission consisted of the President from each league and another member who served as Chairman.³³ Harry Pulliam, the President of the National League, Ban Johnson, the American League President, and the Chairman, Garry Herrmann, club President of the National League Cincinnati Reds, were the original three members of the National Commission.³⁴

The National League originated in 1876. It had successfully fought off all outsiders who tried to force their way into professional baseball.³⁵ Therefore, when the National League had to accept the American

22. *Id.*

23. *Id.* at 267.

24. JOHN HELYAR, *LORDS OF THE REALM* 5 (1994).

25. EUGENE C. MURDOCK, *BAN JOHNSON: CZAR OF BASEBALL* 48 (1982).

26. SEYMOUR, *supra* note 1, at 308.

27. *Id.*

28. MURDOCK, *supra* note 25, at 48. In 1901, the American League convinced forty-five National League players to sign with American League teams. *Id.*

29. *Id.* at 58.

30. *Id.* at 60-61.

31. *Id.* at 61.

32. SEYMOUR, *supra* note 1, at 323.

33. 2 HAROLD SEYMOUR, *BASEBALL: THE GOLDEN AGE* 10 (1971).

34. *Id.* at 10. The National League changed presidents numerous times during the existence of the National Commission. See MURDOCK, *supra* note 25, at 68.

35. SEYMOUR, *supra* note 33, at 8.

League as an equal, the National League owners were extremely bitter.³⁶ Additionally, neither league wanted to give up its autonomy by merging into one big league.³⁷ Yet, it was clear to each league that if disputes arose, there had to be a way of resolving them. The National Commission was the answer.³⁸

Disputes soon arose between the two leagues.³⁹ Most of the initial disputes involved claims of ownership over players.⁴⁰ Disputes also arose over scheduling problems.⁴¹ Throughout these disputes it was clear that much of the animosity between the two leagues remained.⁴²

The Commission did a moderate job in maintaining peace and fostering growth for the two leagues.⁴³ However, political fighting among the different owners, along with an inability of the Commission to deal with gambling problems, lead to the National Commission's downfall.⁴⁴

36. SEYMOUR, *supra* note 1, at 323.

37. SEYMOUR, *supra* note 33, at 16. Although a plan was devised by Frank Robison, President of the St. Louis National League Team, which would combine the two leagues, neither league would agree. In fact, the American League went so far as to pass a resolution that forbade a uniting of the leagues. *Id.*

38. *Id.* at 9. Additionally, the Commission was to implement the National Agreement, which included acting as an arbitrator when disputes arose between Major League and Minor League teams. *Id.* The Commission was also given the power to impose fines and suspensions for violations of this agreement. *Id.* at 15-16.

39. *Id.* at 11.

40. *Id.* at 40. During the bidding war, each league induced players to break their contracts and join the other league. Although the peace settlement was supposed to settle all disputes, some disputes remained. For example, Nap Lajoie, then a member of the Philadelphia Phillies, jumped his contract to play for the American League's Philadelphia team. In response, the Phillies obtained a court injunction. Lajoie was then traded to the American League Cleveland team. After the peace settlement, the Phillies demanded compensation from Cleveland before it would quash the injunction. Eventually, Herrmann was able to convince the Phillies to give in. *Id.* at 11-12.

41. *Id.* at 13. The two leagues did not start their seasons at the same time. Rather, each league would try to start before the other. In addition, when one league published its schedule for the coming year, the other would often purposely schedule conflicts. A conflict occurred when two teams in the same city played home games on the same day. *Id.*

42. *Id.* at 14. In 1904, John T. Brush, the owner of the New York Giants, would not allow his team to play against the Boston Red Sox in the World Series. When asked why, Brush said that he would not allow his team to play in a World Series with Boston because Boston was nothing more than a winner of a minor league championship. *Id.*

43. *Id.* at 18.

44. Jeffrey A. Durney, Comment, *Fair or Foul? The Commissioner and Major League Baseball's Disciplinary Process*, 41 EMORY L.J. 584 (1992).

C. Downfall of the National Commission

Aside from the animosity between the two leagues, there was much intraleague dislike among some team owners.⁴⁵ National League owners were constantly fighting over the National League Presidency.⁴⁶ The American League initially enjoyed ownership unity.⁴⁷ However, things changed when Charles A. Comiskey, the owner of the Chicago White Sox, and Ban Johnson had a falling out.⁴⁸ Comiskey and Johnson, who had been friends, were the two most important men in the creation of the American League.⁴⁹ The Commission actually increased inter-league fighting because the owners were disillusioned with the authority of the Commission, and each League believed the other was taking advantage of it through the Commission.

This mutual distrust stemmed from two factors: the friendship between Garry Herrmann and Ban Johnson, and Herrmann's status as president of the Cincinnati Reds.⁵⁰ Herrmann had the tie-breaking vote in matters before the National Commission.⁵¹ Many of the National League owners believed Johnson controlled the actions of Herrmann, thereby giving the American League control over the Commission.⁵² At the same time, American League owners believed that because Herrmann was president of a National League team, the National League had control of the Commission.⁵³ Every time the Commission ruled on a controversial matter, the Commission's downfall loomed nearer.

45. SEYMOUR, *supra* note 33, at 23. Most of the fighting took place among National League owners.

46. *Id.* at 25-37.

47. *Id.* at 23. This may have had to do with the fact that Ban Johnson, the President of the American League, had possession of 51% of the stock of the American League teams. Originally, Johnson had required the owners in the American League to deposit the stock with him when the League was formed. This was done to ensure that no team could desert the League. *Id.*

48. *Id.* It is unclear when the actual falling out occurred. One story is that Comiskey, Johnson and others went on a hunting trip together. As a practical joke, someone removed the bullets from Johnson's gun and replaced them with duds. Thus, Johnson was unable to hit anything with his gun. Comiskey teased Johnson about not hitting anything. When Johnson found out about the prank, he blamed Comiskey and did not talk to him for months. In reality, the rift was probably caused by Johnson's upholding an umpire's suspension of James Holmes, an outfielder on the Chicago White Sox, for abusive language. *Id.*

49. *Id.* at 23.

50. Depak Sathy, *Reconstruction: Baseball's New Future*, 4 SETON HALL J. SPORT, 27, 40-43 (1994).

51. *Id.*

52. *Id.*

53. *Id.*

In particular, four incidents led to the dissolution of the Commission.⁵⁴ The first dealt with conflicting claims between the St. Louis Browns and the Pittsburgh Pirates over George Sisler.⁵⁵ In 1911, at age seventeen, Sisler signed a contract with the Akron team of the Ohio-Pennsylvania League.⁵⁶ When Sisler's father discovered that George had signed a contract, he repudiated the contract.⁵⁷ Sisler subsequently enrolled in college at the University of Michigan.⁵⁸ In August of 1912, the Columbus Club of the American Association, which controlled the Akron Club, sold Sisler's contract to the Pittsburgh Pirates for \$5,000.⁵⁹ Upon reading that he had been sold to the Pirates, Sisler became concerned.⁶⁰

At this point, Sisler and his father informed the National Commission that the contract was invalid because George had signed the contract as a minor.⁶¹ Fearing threats of a lawsuit, the Commission ruled that Sisler was a free agent and could sign with any team.⁶² However, the Commission believed that Pittsburgh should be compensated for the \$5000 it spent in purchasing Sisler's contract.⁶³ The Commission attempted to give Pittsburgh another chance to sign Sisler before other teams.⁶⁴

Instead of signing with Pittsburgh, though, Sisler signed with the St. Louis Browns, who were in the other league.⁶⁵ The manager of the Browns was Branch Rickey, Sisler's coach at Michigan.⁶⁶ Dreyfuss, the owner of the Pirates, was absolutely furious over the turn of events.⁶⁷

54. *Id.*

55. SEYMOUR, *supra* note 33, at 259.

56. MURDOCK, *supra* note 25, at 159-60.

57. *Id.* at 160. Since Sisler was seventeen at the time, his father's approval was required for a valid contract. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* at 160. If Sisler were deemed to have signed the contract with the Pirates, his amateur status could have been taken away from him. This would have made Sisler ineligible for college sports. See SEYMOUR, *supra* note 33, at 259-60.

61. MURDOCK, *supra* note 25, at 160.

62. SEYMOUR, *supra* note 33, at 260. Herrman consulted a lawyer who told him that Sisler's contract was invalid. The lawyer further stated that the Commission could lose a conspiracy suit and pay damages if it tried to force Sisler to play with Pittsburgh. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* at 261.

66. *Id.* at 259-61.

67. *Id.* at 261.

He charged that Rickey got Sisler to sign a contract with the Browns by tampering with him.⁶⁸

Although it appeared that Rickey did manipulate the situation, the Commission found no proof to substantiate Dreyfuss's claim.⁶⁹ The Commission ruled 2 to 1, with Herrmann casting the tie breaking vote, that Sisler was the property of the Browns.⁷⁰ Dreyfuss believed that Ban Johnson influenced Garry Herrmann to rule in favor of the Browns in order to get Sisler out of the National League.⁷¹ Following this incident, Dreyfuss began calling for the restructuring of the National Commission.⁷²

The second incident concerned the ownership rights to Scott Perry.⁷³ In 1917, the Boston Braves purchased Perry's contract for \$2500.⁷⁴ Perry later breached his contract and went to play for a semi-pro team in Joliet, Illinois.⁷⁵ At this point the National Commission ruled that if Perry ever decided to rejoin organized baseball, Boston would have ownership rights to him.⁷⁶

Perry did return to organized baseball, but signed a contract with Connie Mack's Philadelphia Athletics.⁷⁷ Initially, Boston did not protest the signing because it doubted Perry's athletic ability.⁷⁸ As the season unfolded, Perry excelled and won over twenty games.⁷⁹ Realizing its mistake, Boston sought to have its rights to Perry reinstated.⁸⁰

With the President of the Southern Association and the Secretary of the National Association participating in the vote, the National Commission voted 3-2 in favor of Boston.⁸¹ However, the Athletics refused to

68. MURDOCK, *supra* note 25, at 163. Specifically, Dreyfuss said that Rickey had taken "advantage of his personal friendship with Sisler to enter a bargaining war with Pittsburgh." *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. SEYMOUR, *supra* note 33, at 261.

73. *Id.* at 262.

74. *Id.*

75. MURDOCK, *supra* note 25, at 163.

76. SEYMOUR, *supra* note 33, at 262.

77. MURDOCK, *supra* note 25, at 163.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

give Perry to Boston.⁸² Connie Mack went to court and secured an injunction forbidding Boston from interfering with his use of Perry.⁸³

This infuriated Dreyfuss because he had adhered to the Commission's decision in the Sisler matter, only to watch Philadelphia, with Johnson's approval, go to court and avoid complying with the Commission's ruling.⁸⁴ In addition, Tener, the current president of the National League, was equally unhappy with the actions of Philadelphia.⁸⁵ In fact, he urged the National League owners to cease all relations with the American League until Philadelphia returned Perry to the Braves.⁸⁶ When the National League owners refused to take Tener's position, he resigned.⁸⁷

The Perry incident illustrated that the National League and American League were still adversarial in their relations. In addition, Philadelphia sought an injunction which created a precedent where the National Commission's actions could be second guessed.⁸⁸

The National Commission, however, survived due to the strength of Ban Johnson. His actions were approved by the American League owners.⁸⁹ As long as he had the support of the American League owners, the Commission would have the support of at least half of all the owners.

However, a third incident led to the weakening of Johnson's authority in the American League and, thus, the further decline of the Commission.⁹⁰ Due to World War I, many minor league teams ceased operations.⁹¹ Charles Comiskey wanted to sign Jack Quinn, a pitcher for Vernon, a team that had ceased operations.⁹² Comiskey sought a ruling from the National Commission that Quinn was a free agent.⁹³ The Commission told Comiskey that he could sign Quinn.⁹⁴

Unbeknownst to the Commission, while Comiskey was seeking a ruling, the New York Yankees purchased Quinn's contract from the Vernon

82. *Id.* at 164.

83. *Id.*

84. MURDOCK, *supra* note 25, at 164.

85. *Id.* at 165.

86. *Id.*

87. *Id.* Tener's replacement as president of the National League was John Heydler. Prior to assuming responsibility as president, Heydler served as league secretary. *Id.*

88. *Id.*

89. *Id.*

90. J.G. TAYLOR SPINK, JUDGE LANDIS AND TWENTY-FIVE YEARS OF BASEBALL 49 (1947).

91. *Id.*

92. MURDOCK, *supra* note 25, at 157.

93. *Id.* at 156-57.

94. *Id.* at 156-57.

Club.⁹⁵ The National Commission held that the Yankees had a superior claim, despite its prior ruling.⁹⁶

Comiskey blamed Ban Johnson for the ruling of the Commission, and decided that Johnson needed to be removed from the Commission.⁹⁷ Since Johnson began to lose support of the American League, the Commission also began to lose support of the American League.⁹⁸

In addition, there was an incident involving Carl Mays that caused the owners of the Yankees, Jacob Ruppert and Tillinghast L'Hommedieu Huston, to join with Comiskey in an attempt to rid the Commission of Johnson.⁹⁹ In 1920, Herrmann's term as Chairman was over.¹⁰⁰ Because Johnson had lost standing in the American League and the National League President, John Heydler, refused to support Herrmann, Johnson was unable to get Herrmann re-elected.¹⁰¹

For the entire 1920 season the National Commission did not have a Chairman.¹⁰² The rift between the American and National League still existed. The end of the Commission was in sight, and one final incident would perform the final burial rites.¹⁰³

In 1919, the White Sox were favored to win the World Series.¹⁰⁴ However, the team lost to the Cincinnati Reds five games to three in the Series.¹⁰⁵ The next year, it surfaced that eight players from the White Sox were involved in throwing the 1919 Series.¹⁰⁶ Up to this point, there had been isolated rumors that some players were involved in gambling,

95. *Id.* at 157.

96. *Id.*

97. *Id.*

98. *Id.*

99. SEYMOUR, *supra* note 33, at 264-73. Carl Mays, a Boston Red Sox pitcher, walked off the field in the middle of a game against the White Sox. Mays ignored Red Sox President Harry Frazee's order to play and went fishing. As a result, Ban Johnson suspended Mays indefinitely and issued instructions to umpires that Mays was not allowed to pitch games in a Yankee uniform. The Yankees procured a temporary injunction restraining Johnson and the umpires from prohibiting Mays from pitching. As the season went on, the intensity of the feud grew. The Yankees finished in third place, but Johnson convinced Herrmann to withhold its award for finishing in third place. The Yankees filed suit against Johnson, claiming he had planned to drive the Yankees out of baseball. The club owners met to resolve the problem. The owners decided to reinstate Mays without penalty and New York received its third place money. See Sathy, *supra* note 49, at n.53 (citation omitted).

100. SEYMOUR, *supra* note 33, at 272.

101. SPINK, *supra* note 90, at 53.

102. SEYMOUR, *supra* note 33, at 273.

103. SEYMOUR, *supra* note 33, at 311.

104. *Id.* at 294.

105. *Id.* at 295.

106. Durney, *supra* note 44, at 584. In September of 1920, a Cook County Illinois special grand jury began investigating baseball gambling, particularly the 1919 World Series. After

but in general people could not believe that a World Series could be thrown.¹⁰⁷ When the story broke in the papers, the public was outraged.¹⁰⁸

Desperate to fix the tarnished image of professional baseball, the owners decided to implement drastic changes.¹⁰⁹ The National Commission was dissolved and plans were made to elect a powerful Commissioner.¹¹⁰ While some people argue that the Black Sox scandal destroyed the National Commission, it was clear before the scandal that the 'Commission was doomed.¹¹¹

II. THE CREATION OF THE COMMISSIONER'S OFFICE

A. Judge Kenesaw Mountain Landis

The baseball owners decided to approach Judge Kenesaw Mountain Landis about becoming the chairman of a new commission that would rule over baseball.¹¹² Landis was appointed a federal judge in 1905 at the age of 39.¹¹³ The baseball owners were familiar with him because he had served as judge during a lawsuit brought by members of the Federal League against the National and American Leagues.¹¹⁴ During the trial, Landis showed himself to be a big fan of professional baseball.¹¹⁵ His reputation for integrity made him the owners' choice as their new leader.¹¹⁶

A committee of owners approached Landis about becoming the new chairman of baseball.¹¹⁷ Landis would accept the job, provided he had absolute power when making decisions.¹¹⁸ The members of the commit-

numerous witnesses testified, two of the White Sox players confessed to fixing games and implicated six of their teammates. The grand jury indicted all eight players. *Id.* at 585.

107. SEYMOUR, *supra* note 33, at 274-93.

108. *Id.* at 304.

109. SPINK, *supra* note 90, at 64.

110. SEYMOUR, *supra* note 33, at 311-23.

111. *Id.* at 311. During the Carl Mays affair, Albert D. Lasker, a stockholder of the Chicago Cubs, devised the plan that would eventually be installed. This was almost one year before the Black Sox scandal surfaced. *Id.*

112. *Id.* The Lasker plan detailed a three person committee, made up of persons not financially involved with baseball, to be given absolute power over baseball disputes. *Id.* at 311-12.

113. See HELYAR, *supra* note 24, at 5-7.

114. *Id.*

115. *Id.*

116. See Sathy, *supra* note 50, at 43.

117. SPINK, *supra* note 90, at 71-72.

118. *Id.* at 72.

tee assured Landis that he would have this power.¹¹⁹ However, Landis would not accept the position until a new National Agreement was drafted.¹²⁰

In December of 1920, Landis met with the baseball owners and their attorneys to finalize the drafting of the new National Agreement.¹²¹ Using John Heylar's initial draft as a starting point, George Wharton Pepper, representing the owners, wrote what was to become the Major League Agreement (MLA).¹²² After some discussion over the finer points of the Agreement, the team owners and Landis approved the document.¹²³ Part of the Agreement detailed the creation of a Commissioner's Office as well as the powers associated with the position.¹²⁴

B. The Commissioner's Power According to the Major League Agreement of 1921

The Commissioner derived the majority of his authority from Article I, Section 2 and 3, and Article VII, section 1. Article I, Sections 2 and 3 created the Commissioner's "best interests" power. In particular, Article I, Section 2(a) gave the Commissioner the power to investigate a transaction or practice that he believed could be detrimental to the "best interests" of baseball. Section 2(b) allowed the Commissioner, after finishing his investigation, to take whatever preventative, remedial or punitive action he believed appropriate under the circumstances. This meant he could act against either Major League, any Major League club or any individual party to the MLA, and against the players.

Section 3 lists courses of punitive action the Commissioner could take. Included in this list was the right to make a public reprimand, im-

119. *Id.*

120. SEYMOUR, *supra* note 33, at 321.

121. *Id.*

122. Joint Meeting of the National League and American League owners and representatives (Nov. 8, 1920) (Tr. at 110-12).

123. Joint Meeting of the National League and American League owners and representatives (Jan. 12, 1921) (Tr. at 1-17). Orally, the owners agreed to give Landis absolute power as Commissioner. Yet, during the finalizing of the agreement, the owners added a clause to the Major League Agreement that would allowed Landis to be overruled by an advisory committee in certain circumstances. Before Landis could leave the room to allow the owners to discuss the situation, the owners quickly removed the clause, giving Landis absolute power as Commissioner. *Id.*

124. MAJOR LEAGUE AGREEMENT OF 1921 (1921) [hereinafter MLA]. In establishing the office of the Commissioner, the owners made it clear that they not only wanted a person to protect baseball from the influences of gambling, but also to protect the owners themselves. Joint Meeting of the National League and American League owners and representative (Jan. 12, 1921) (Tr. at 1-17).

pose a \$5,000 fine, temporarily deprive a club of the right of representation in joint meetings and suspend or permanently declare a player ineligible to play for any club. It is uncertain why there are two "best interests" clauses in Article I.

One reading suggests that Section 3 augments the power granted in Section 2. Section 2 gives the Commissioner the power to investigate and act. Section 3 seems to allow the Commissioner to act without investigating conduct "detrimental to the best interests" of baseball. However, the language of Section 2 seems to prevent the need for any augmentation from Section 3. This is because the "best interests" clause in Section 2 is broad enough to contain this reading of authority from Section 3. Since Section 2 obviates the need for Section 3, Section 3 probably exists for clarification reasons and not as an authorization of power to the Commissioner.

Another reading suggests that the listed punishments in Section 3 contain the only available forms of punitive actions available to the Commissioner. If this is the case, then Section 3 acts to limit the broad powers granted by Section 2.

The interpretation of Article I, Section 2 and 3 has become a major issue in the interpretation of the Commissioner's "best interests" power.¹²⁵

In addition, the Commissioner derives authority from Article VII of the MLA. Article VII, Section 1 dictates that the Major League clubs are bound by the Commissioner's decisions, including any disciplinary decisions. Article VII, Section 1 also dictates that the Major League teams waive their right to recourse to the courts.

While the courts have acknowledged the presence of the waiver of the right to recourse clause as demonstrative of the intended breadth of the Commissioner's power, the courts have refused to dismiss lawsuits brought against a Commissioner based on grounds that the teams have waived their right to recourse. However, the courts have not reviewed a Commissioner's decision unless he has exceeded his authority.

C. Commissioner's Power as Intended by the Original Signatories to the Major League Agreement

While the owners drafted the MLA, they recorded their views on the substance of the agreement. It is clear that the owners intended to grant the Commissioner absolute power over all of baseball. While discussing

125. See *infra* part IV.A.

the non-recourse provision of Article VII, Barney Dreyfuss, owner of the Brooklyn Dodgers, stated that "... we wanted to give [the Commissioner] unlimited power over baseball, and that is what has been carried out in this section. Power without any review — that is the basis of this thing."¹²⁶

Later, August Herrmann, owner of the Cincinnati Reds, acknowledged a similar sentiment on the powers of the Commissioner when he stated, "I know the [intention] was to give him [Landis] absolute power."¹²⁷

Although the owners intended to give Landis absolute power, they were not necessarily pleased with such a prospect. Prior to the final drafting session, the owners tried to add two limiting clauses to the Commissioner's powers.

First, the owners tried to amend a provision that allowed the Commissioner to suspend or remove an owner for action "detrimental to the best interests" of baseball. The owners sought to only grant the Commissioner the ability to recommend suspension or removal of an owner.¹²⁸

Second, the owners attempted to revise Article II, Section 1 to dictate that the Commissioner's role was limited to that of a tiebreaker in matters before the Advisory Committee. Before the attempted revision, the Commissioner had authority to rule on all matters before the Advisory Committee.¹²⁹

At the last drafting session, the owners tried to get Landis to agree to these changes.¹³⁰ In response, Landis made it clear that he would not accept the position as Commissioner unless the two provisions were removed. Within a few minutes after Landis made clear his intentions, the owners removed the two changes to the draft of the MLA.

The fact that the owners deleted the limiting clauses further suggests that the owners intended to grant the Commissioner absolute power to rule over baseball.

However, intentions do not necessarily create law. Although the original owners intended to grant the Commissioner absolute power

126. Joint Meeting of the National League and American League owners and representatives (Jan. 10, 1921) (Tr. at 10).

127. *Id.* at 12.

128. *See supra* note 123.

129. *Id.*

130. *Id.* It appears more likely that the owners were trying to slip the changes by the Judge. When confronted with the matter, the owners acted like they were as surprised as him to see the changes in the MLA. *Id.*

over baseball, the issue has arisen as to whether they succeeded. This issue is discussed in Part IV of this Article.

III. CHANGES TO THE COMMISSIONER'S OFFICE THROUGH THE YEARS

A. 1945 Amendments

1. Article I, Section (3)

In 1944, Commissioner Landis died, and before the election of a new Commissioner the team owners amended the MLA, making two changes limiting the Commissioner's authority.

The first change was the addition of a clause to Article I, Section 3, which reads:

No Major League rule or other joint action of the two Major Leagues and no act or procedure taken in compliance with any such Major League rule or joint action of the two Major Leagues shall be considered or construed to be detrimental to baseball. If in the judgment of the Commissioner, any Major League rule or any joint action of the two Major Leagues becomes in its operation impracticable or disadvantageous to baseball, either by reason of changed conditions or otherwise, the Commissioner shall send a notice to the President of each Major League stating his judgment and the reasons therefor, and noticing such rule or joint action for reconsideration at the next regular joint meeting of the Major Leagues, or at the a special joint meeting of the Major Leagues called by the Commissioner for the purpose of such reconsideration. At such regular or special joint meeting, such rule or joint action shall be voted upon as would be done if it were being initially proposed. During such period of reconsideration, such rule or joint action of the Leagues shall be in full force and effect.¹³¹

However, the owners gave the Commissioner the ability to suggest the removal of a Major League rule. Therefore, the Commissioner, who could not exercise his "best interests" power in contradiction to an existing Major League rule, could at the very least try to get the rule removed or changed.

2. Article VII, Section 2

The second change made to the MLA was the deletion of a clause in Article VII, Section 2 stating that once a Commissioner made a decision,

131. MLA of 1945 art. I, § 3 (1945).

the team owners "severally waive such rights of recourse to the courts as would otherwise have existed in their favor."¹³²

B. 1964 Amendments

When Commissioner Ford Frick retired in 1964, he urged the owners to remove the clause from Article I, Section 3 of the MLA that was added in 1944, which prevented the Commissioner from exercising his "best interests" power against an "act or procedure" that complied with any "Major League rule or joint action of the two Major Leagues."¹³³ The owners listened to Frick and deleted the aforementioned amendment to Article I, Section 3.¹³⁴

Furthermore, the team owners reinstated the non-recourse to the court's provision of Article VII, Section 2 that was deleted in 1944, and replaced in Article I, Section 2(b) the phrase "detrimental to the best interests" with the phrase "not in the best interests."¹³⁵

C. 1974 Amendments

1. Article VII, Section 1

In 1974, the owners added a new section to Article VII of the MLA. The section read as follows:

All disputes and controversies related in any way to professional baseball between clubs (including their officers, directors, employees and players), other than those whose resolution is expressly provided for by another means in this Agreement, the Major League Rules, the constitution of either Major League or the Basic Agreement between the Major Leagues and the Major League Baseball Players Association, shall be submitted to the Commissioner, as Arbitrator who, after hearing, shall have the sole and exclusive right to decide such disputes and controversies. The procedure set forth in this section is separate from and shall not alter or affect the procedure set forth in Article V governing the role of the Commissioner at Joint Meetings of the two Major Leagues.¹³⁶

132. MLA OF 1945 (1945). However, no lawsuits were brought by any owner during Chandler's or Frick's terms, which lasted from 1944 to 1964.

133. Brief for Appellee at 1-7, *Rose v. Giamatti*, 721 F.Supp. 906 (S.D. Ohio 1989) (No. 77-2008) (Frick Aff.).

134. *Id.*

135. MLA OF 1965 (1965).

136. MLA OF 1977 art. VII, § 1 (1977).

The "best interests" power of Article I did not appear to place any limits on what issues the Commissioner could decide. This new provision appeared to remove from the Commissioner the ability to use his "best interests" power when other provisions of the MLA expressly provide for resolution.

On the other hand, one could argue that the Commissioner's "best interests" power was not unlimited to begin with and that this new provision augmented the Commissioner's "best interests" power. No longer would the Commissioner need to be reacting to an act or procedure in order to exercise his power. Now, the Commissioner was given power to settle disputes among members of baseball, as long as there were not other means provided for in other baseball governing documents. This argument assumes that the Commissioner did not have the authority before the change to settle disputes among members of baseball that did not involve an act or procedure.

D. 1977 Amendments

1. Article I, Section 3

In the 1976 case *Atlanta National League Baseball Club v. Kuhn* (*Atlanta Braves*), Commissioner Kuhn made Atlanta forfeit a draft choice in the upcoming draft for tampering violations.¹³⁷ In response, the court held that Article I, Section 3 contained the only available list of punishments the Commissioner could dispense in accord with his "best interests" power.¹³⁸ The court further added that Kuhn's action was a punishment and could not be sustained since forfeiture of a draft choice was not one of the enumerated punishments available to the Commissioner under the MLA.¹³⁹

In this case, the court did not determine whether this list constricted the Commissioner's use of his "best interests" power to act in a preventative or remedial manner, as authorized in Article I, Section 2(b).¹⁴⁰ However, the court in *Finley v. Kuhn* did appear to answer the question.¹⁴¹ This court held that the enumerated list of punishments did not limit the Commissioner's choice of action concerning a preventative or

137. 432 F.Supp. 1213 (N.D. Ga. 1977).

138. *Id.* at 1225.

139. *Id.* at 1226.

140. *Id.*

141. *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 535-40 (7th Cir. 1978).

remedial issue.¹⁴² Nevertheless, the owners amended the MLA to put this issue to rest.

First, the owners reinserted the word "punitive" in front of the word "action" in Article I, Section 3, so that the provision read "[i]n the case of conduct by Major Leagues, Major League Clubs, officers, employees or players which is deemed by the Commissioner not to be in the best interests of Baseball, *punitive* action by the Commissioner for each offense may include any one or more of the following."¹⁴³

The addition of the word "punitive" codifies the aforementioned holding in *Atlanta Braves* by declaring the list of enumerated choices of Article I, Section 3 to be the only available punishments. This addition is consistent with the holding in *Finley*, which ruled that the enumerated choices of Article I, Section 3 did not limit the Commissioner's ability to take preventative or remedial action.¹⁴⁴

Furthermore, the enumeration of punishment choices in Article I, Section 3 was increased to include the following provision:

provided that in the case of conduct by a Major League Club which is deemed by the Commissioner to constitute prohibited negotiations or dealings with a player respecting employment, punitive action by the Commissioner may include a fine not to exceed Two Hundred Fifty Thousand Dollars (\$250,000), and/or loss of player negotiation selection rights.¹⁴⁵

Thus, the owners authorized the Commissioner to dispense a punishment when he believes a team has tampered with another team's player. A Commissioner no longer had to abide by the decision made by the court in *Atlanta Braves*.

E. 1983 and 1984 Amendments

1. Article V, Section 2

Many changes have occurred in baseball since the creation of the MLA. Issues such as television, radio contracts, and team expansion were not envisioned by the original signatories to the MLA. The main reason for establishment of the Commissioner's office was to restore the public confidence in the moral integrity of baseball. The Commissioner was to act as an independent party to settle disputes among the members of baseball. Recognizing the changing nature of baseball, the owners

142. *Id.*

143. MLA OF 1978 art. I, § 3 (1978).

144. *See supra* note 140.

145. MLA OF 1978, art. I, § 3(e) (1978).

established a restructuring committee in 1983 to address the complex business issues that had arisen.

The restructuring committee first amended Article V, Section 2 of the MLA. Prior to 1983, Article V, Section 2 stated that at joint meetings presided over by the Commissioner, each League would have one vote on an issue. If the two leagues disagreed on an issue, the Commissioner cast the tiebreaking vote. Once cast, the Commissioner's vote was not appealable.

In its new form, the section changed the voting procedures at joint meetings. Instead of each league having one vote, all teams were given a vote. For most matters, a majority vote would decide an issue. However, for other issues, different voting requirements decided matters. No longer did the Commissioner have the tiebreaking vote on joint matters.

The MLA stated that teams recognized that "Major League professional baseball is a unique association of twenty-six Major League teams, operating both as individual franchises organized into two leagues, and doing business collectively as Major League Baseball."¹⁴⁶

In addition, the amended section explained that a change was needed because the old voting "procedures under the Major League Agreement and Major League Rules d[id] not efficiently serve the need for cooperative decision making among the teams."¹⁴⁷

2. Article I, Section 2(a)

The restructuring committee made more amendments to the MLA and the powers of the Commissioner. It decided to alter the purpose of the Commissioner from an independent party, whose responsibility was to protect the integrity of baseball, to that of "chief executive officer of Major League Baseball."¹⁴⁸ As the CEO of baseball, the Commissioner was given the right to "be present and to participate in any official meetings of either League, any committee thereof, any Major League committee, or any other decision making or deliberative body created by the clubs; and the Commissioner shall receive copies of the minutes or reports, if any, of all such meetings."¹⁴⁹

146. MLA OF 1985 art. V, § 2 (1984).

147. *Id.*

148. MLA OF 1985 art. I, § 2(a) (1985).

149. Resolution adopted by the Major League Clubs (Mar. 3, 1984).

3. Article I, Sections 3(e) and 3(f)

In addition to making the Commissioner the CEO of baseball, the MLA was amended to give the Commissioner more power to levy fines concerning punitive matters. Prior to the changes, a fine could not exceed \$5,000 against a Major League team, and could not exceed \$500 against any officer, employee or player. After the changes, a Major League Team could be fined up to \$250,000, and of an officer or employee, up to \$25,000.

In addition to raising the limits of fines, Article I, Section 3 was amended to include a new punishment available to the Commissioner. This punishment authorized a Commissioner to take away from a team "... the benefit of any or all of the Major League Rules, including but not limited to the denial or transfer of a player selection rights provided by Major League Rules 4 and 5."¹⁵⁰ The Commissioner could now implement a very broad range of punishments.

4. Article I, Section 7

The next change to the MLA was an amendment to the Commissioner hiring provision of Article I, Section 7. Section 7 details voting procedures among the teams concerning the election and re-election of a Commissioner. Prior to the changes, a three-fourths vote per League of all teams was required in order for a candidate to become Commissioner. Additionally, a three-fourths vote per League was required by the teams in order for a Commissioner to be re-elected. After the amendment, all that was required for a person to be elected Commissioner was a three-fourths vote of all the Major League teams (at least five in each League). Furthermore, for a Commissioner to remain in office for another term, all that was needed was a majority vote (at least five per league) of the teams.

Bowie Kuhn was Commissioner for 20 years and during that time, he made decisions that went against one team's interest or another. The more decisions he made, the more enemies he made. Each time he sought re-election, he found it more difficult to get a three-fourths vote in his favor. Recognizing that the Commissioner should be removed as much as possible from politics, the teams implemented this aforementioned change. No longer could four teams prevent the re-election of a Commissioner. Rather, a majority of the teams was needed to keep a Commissioner from being re-elected.

150. MLA OF 1985 art. I, § 3(f) (1985).

5. Article VII, Section 2

The last change made by the restructuring committee was to amend Article VII, Section 2 of the MLA. This is the section that contained the non-recourse to the court provision that was removed from the MLA in 1944. The first part of the new Article VII, Section 2 detailed the intent of the owners in having a non-recourse to the court provision by stating that:

[t]he Major Leagues and their constituent clubs recognize that it is in the best interests of Baseball that all actions taken by the Commissioner under the authority of this Agreement, including but not limited to Article I, Section 2 and 3 and this Article VII, be accepted and complied with by the Leagues and clubs . . .¹⁵¹

Up to this point the courts greatly discussed the non-recourse provision in the cases before them. If there was any doubt before, this provision now clearly expressed that the owners did not want an authorized decision made by the Commissioner to be questioned in a court of law.

In addition, the owners amended the language of the non-recourse provision to read "*severally agree to be finally and unappealably bound by such actions and severally waive such right of recourse to the courts as would otherwise have existed in their favor.*"¹⁵²

Finally, the owners added a provision at the end of Article VII, Section 2 that gave the Commissioner the power to force a noncomplying team to pay the cost of such noncompliance. Additionally, the provision provided that the Commissioner still had other available remedies set forth in the MLA. The provision reads as follows:

In the event of noncompliance by any League or club, or any officer or employee thereof, with any action of the Commissioner, and in addition to any other remedy which may be available to the Commissioner, the Commissioner may direct that the costs, including attorneys' fees, to the Office of the Commissioner of any court proceeding involving such action, whether in defense or enforcement thereof, be reimbursed to the Office of Commissioner by such non-complying League or club. Nothing herein shall be construed to limit any rights of indemnity which the major Leagues or their constituent clubs may have against any club.¹⁵³

151. MLA of 1985 art. VII, § 2 (1985).

152. *Id.* (emphasis added).

153. *Id.*

F. 1994 Amendments

1. Article I, Section 2(a) and (5)

In 1992, after a turbulent few years as Commissioner, Fay Vincent resigned his position. He no longer had the support of the owners and thus could not effectively serve as Commissioner. Following his resignation, the owners sought to amend the MLA in order to resolve some of the issues they felt were raised during Vincent's term.

First, the owners clarified the Commissioner's role in labor negotiations.¹⁵⁴ A new Section 5 was added to Article I stating that "notwithstanding the provisions of Sections 2 and 4, above, the powers of the Commissioner to act in the best interests of Baseball shall be inapplicable to any matter relating to a subject of collective bargaining between the Clubs and the Major League Baseball Players Association."¹⁵⁵

Additionally, in Section 2(a) of Article I, the owners designated that the Commissioner was now responsible for serving as the Chairman of the Player Relations Committee (PRC) or choosing the Chairman. Additionally, the section stated that the Commissioner would also serve as Chairman of "such other committees as the Major League Clubs shall from time to time determine by resolution."¹⁵⁶

The purpose of the Section 5 amendment was to prevent a Commissioner from using his "best interests" power to circumvent the PRC's handling of labor negotiations. The following actions taken by Bowie Kuhn when he was Commissioner warranted such changes.

In 1976, the PRC decided to lock out the players from starting the baseball season until a better labor deal could be made. As the lock out progressed, the owners were getting closer to a favorable labor deal. Although Commissioner Kuhn was not involved in any of the labor negotiations, he wanted the lockout over as soon as possible. Using his "best interests" power, Kuhn forced the PRC and the owners to stop the lockout. Prior to the 1994 amendment of Section 5, a Commissioner was authorized to take such action.

Following the 1994 amendment to Section 5, the above situation could not happen. However, the owners, as evidenced by the amend-

154. During the last major labor negotiations between the Major League Baseball Players Association (MLBPA) and the Players Relation Committee (PRC) before Commissioner Vincent's resignation, many owners complained that the Commissioner compelled the owners to follow a course that the majority did not want to take. HELYAR, *supra* note 24, at 412-24.

155. MLA OF 1994 art. I, § 5 (1994).

156. *Id.* at § 2(a). The PRC is a committee that handles the labor negotiations for the owners with the MLBPA.

ments in Section 2(a), intended the Commissioner to head the PRC and be involved with labor negotiations. As head of the PRC, the Commissioner chooses who will assist him in labor negotiations. Additionally, as head of the PRC, he chooses what labor negotiation matters will be voted on by the owners. Thus, in the above scenario, a Commissioner would be less likely to use his "best interests" power because he has substantial control over the labor negotiations and dictates what the owners can vote on.

At first glance it appears that the owners decreased the powers of the Commissioner, but they have actually increased them. It is unwise for a Commissioner, who has not been involved in labor negotiations between the PRC and the MLBPA, to use his "best interests" power to circumvent the PRC's negotiation efforts. It is unwise because the Commissioner could be fired for such action or fail to be re-elected.¹⁵⁷ At the very least he would anger many owners and experience difficulty in the re-election process.

On the other hand, the amendments have made the Commissioner the Chairman of the PRC. As Chairman he has much control over the direction of the negotiations with less fear of getting fired. He is less tempted to use his "best interests" power because he leads the PRC.

2. Article I, Section 4

While Vincent was Commissioner, he used his "best interest" power to attempt to re-align the National League. Prior to this attempt, the Chicago Cubs, using a veto provision in the National League Constitution, had blocked all previous attempts at National League realignment. After Vincent's decision, the Cubs sued him, claiming he was not authorized to use his "best interests" clause in contravention of existing Major League rules.¹⁵⁸

The Cubs got an injunction against Vincent, but before the case was heard on appeal, Vincent resigned. Because the case was dropped, the legal issue concerning the breadth of the "best interests" power was not resolved.

157. Even though the amendments of 1985, art. I, § 7 dictate that a Commissioner needs only an affirmative majority vote (with at least five votes per league) to be re-elected, a Commissioner who acts as Kuhn did concerning a lock-out could experience difficulty in garnering a majority vote for re-election.

158. *Chicago Nat'l League Ball Club, Inc. v. Vincent*, No. 92 c4398 (N.D. Ill. 1992), *appeal docketed*, No. 92-2721 (7th Cir. July 23, 1992).

In an attempt to resolve the issue of whether the Commissioner can use his "best interests" power in contravention to existing Major League rules, the teams subsequently amended what is now Article I, Section 4 of the current MLA. The section reads as follows:

Notwithstanding the provisions of Section 2, above, the Commissioner shall take no action in the best interests of Baseball that (i) requires the Clubs to take, or to refrain from taking, joint League action (by vote, agreement or otherwise) on any of the matters requiring a vote of the Clubs at a Joint Major League Meeting that are set forth in Article I, Section 9 or in Article V, Section 2(b) or (c), or (ii) requires the member Clubs of either League to take, or to refrain from taking, League action (by vote, agreement or otherwise), on any matter to be voted upon by Member Clubs of the League pursuant to their League Constitution; *provided, however*, that nothing in this Section 4 shall limit the Commissioner's authority to act on any matter that involves the integrity of, or public confidence in, the national game of Baseball.

Under this new section, the Commissioner is not authorized to use his "best interests" power to take an action that the Major League Clubs could not accomplish otherwise, unless they voted or refrained from voting at a Joint Major League Meeting or League Meeting concerning its Constitution on the matter. However, there is an exception if the matter involves the integrity or public confidence of baseball.

This section does not limit the Commissioner's use of his "best interests" power, but rather increases such use. Before the amendment, it was unclear whether the Commissioner could use his "best interests" power in the ways detailed in the new Section 4 of the MLA. Now, he can use his "best interests" power in all the ways detailed in Section 4, except in areas of labor, provided he can show that the integrity or public confidence of baseball is at stake. Baseball is a public business and, arguably, any matter can be characterized by a Commissioner as a public confidence or integrity issue. While the Commissioner may not always be correct in such an assertion, the courts have shown themselves very reluctant to review a Commissioner's decision.

Therefore, the clause does not really limit the Commissioner's "best interests" power, but allows him broader use of this power, as long as he claims to be protecting the integrity or public confidence of baseball.

3. Article I, Section 9

In addition to adding two sections to Article I, the owners renamed Section 7 as Section 9 and added new language. The first section states that if the Commissioner is incapacitated at any time, the Executive

Council will perform his duties. It further adds that incapacity is to be determined by the Commissioner or the Executive Council. Finally, a three-fourths majority of the teams (with at least five teams in each League) can elect a temporary Commissioner for a period of less than three years.

Yet, what criteria would the Executive Committee use to determine whether the Commissioner is incapacitated? Even if the Executive Committee had stringent standards for making this determination, there is a possibility that a Commissioner could be removed regardless of his objections.

4. Article I, Section 10

Lastly, Section 10 has been created to deal with the election of League Presidents. The section requires a majority vote of the clubs of the "affected League, together with the approval of the Commissioner . . ." ¹⁵⁹ in order for the election or re-election of a League President.

In the past the Commissioner did not have a vote on the election of League Presidents. Now, the Commissioner has the ability to veto any candidate for League President.

5. Article V, Section 2(e)

Article V, Section 2(e) states that "[a]ll League-specific matters shall be decided by a vote of the Member Clubs of such League pursuant to their League Constitution." ¹⁶⁰

One purpose of this section is to limit the power of the Commissioner. The provision accomplishes this by not permitting the Commissioner to resolve matters pertaining to a specific League. However, it is clear from the revised Article I, Section 4 that if the integrity or public confidence of baseball is at stake, the Commissioner can utilize his "best interests" power to settle the matter.

6. Article VII, Section 1

One of the issues in the *Chicago Cubs* case was whether Article VII, Section 1 limited or augmented the Commissioner's use of his "best interests" power. The owners amended this section to dictate that the Commissioner's "best interests" power is not affected by the rest of the section. In other words, an issue will not be submitted to the Commis-

159. MLA OF 1994 art. I, § 10 (1994).

160. MLA OF 1994 art. V, § 2(e) (1994).

sioner for arbitration if the issue's resolution is expressly provided for by other means. However, the Commissioner can use his "best interests" power to resolve an issue that he has not been asked to arbitrate.

G. *Results of the Amendments*

There have been many changes to the office of the Commissioner. The first Commissioner served as the protector of baseball. His role was to clean up baseball and protect the moral integrity of the game. Over the years, however, the role of the Commissioner has dramatically changed.

The Commissioner does not have the absolute power that he once appeared to have. His responsibilities have increased, but he no longer has absolute power over any issue he is involved in.

The Commissioner is not the umpire of baseball anymore, but rather the CEO of baseball. He no longer protects the status quo, but leads the business into the future. It takes a more dynamic person to serve as Commissioner now than it did 73 years ago.

When issues such as labor negotiations, television contracts and expansion first arose, the owners tried to handle these issues among themselves and not rely on the Commissioner. Now, the owners intend the Commissioner to be involved in these issues. Except for some restrictions on his actions toward the players, the Commissioner cannot do anything that Commissioner Landis could once do. Yet, there are some things that the Commissioner today can accomplish that could not be accomplished by Commissioner Landis.

Because the Commissioner has not lost any responsibility and has been given input into the overall structure of baseball, the Commissioner of professional baseball has more power today than he did in the past.

IV. INTERPRETATION OF THE "BEST INTERESTS" POWER OF THE MLA

A. *Judicial Interpretation*

1. *Milwaukee American Ass'n v. Landis*

In 1930, Judge Landis, using the "best interests" power, refused to allow the St. Louis Browns to assign a player's contract to a minor league team.¹⁶¹ In addition, Landis declared the player a free agent.¹⁶²

161. *Milwaukee Am. Ass'n. v. Landis*, 49 F.2d 298 (N.D.Ill. 1931), *appeal dismissed*, 61 F.2d 1036 (7th Cir. 1931). Art. I, § 2(a) of the MLA of 1921 (which contains the "Best Interest" clause) states that the Commissioner has the power:

Landis stated that Phil Ball, the owner of the St. Louis Browns, violated a rule which forbid a major league team from keeping a player it controlled with a minor league team for more than two seasons without giving other major league teams the option of claiming the player's services.¹⁶³ The St. Louis Browns and Milwaukee of the American Association sued to enjoin Landis from disapproving the option contract between St. Louis and Milwaukee.¹⁶⁴

The court upheld Landis's use of the "best interests" power in disapproving the assignment. The court explained that as Commissioner, Landis had "all the attributes of a benevolent but absolute despot and all the disciplinary powers of the proverbial pater familias."¹⁶⁵ In acting as this despot, the court emphasized that the Commissioner had "an almost unlimited discretion in the determination of whether or not a certain state of facts creates a situation detrimental to the national game of baseball."¹⁶⁶

The plaintiffs argued that the meaning of "conduct detrimental to baseball" should be limited to actions specifically prohibited under the Major League Agreement.¹⁶⁷ However, the court answered this argument by stating:

the provisions are so unlimited in character that we can conclude only that the parties did not intend so to limit the meaning of conduct detrimental to baseball, but intended to vest in the [C]ommissioner jurisdiction to prevent any conduct destructive of the aims of the code. Apparently it was the intent of the parties to make the commissioner an arbiter, whose decisions . . . made relating to the purpose of the organization and all conduct detrimental thereto, should be absolutely binding.¹⁶⁸

[T]o investigate, either upon complaint or upon his own initiative, any act, transaction or practice charged, alleged or suspected to be detrimental to the best interests of the National Game of Baseball; with authority to summon persons and to order the production of documents; and, in case of refusal to appear or produce, to impose such penalties as are hereinafter provided.

162. *Id.* at 299. The player's name was Fred Bennett. See SPINK, *supra* note 90, at 198.

163. Chicago Nat'l League Ball Club, Inc. v. Vincent, No. 92 c4398, at 303. Phil Ball owned the St. Louis Browns and several minor league teams. See SPINK, *supra* note 90, at 198. Landis argued that because Ball owned the minor league teams that were purchasing Bennett's contract, St. Louis had controlled him for longer than the allowed two year period. *Id.*

164. See *Milwaukee Am. Ass'n*, 49 F.2d at 299.

165. *Id.*

166. *Id.* at 303.

167. *Id.* at 302.

168. *Id.*

Additionally, the Plaintiffs argued that Landis was not authorized to make a player a free agent.¹⁶⁹ The court responded that it was immaterial whether the MLA specifically authorized the Commissioner to make a player a free agent because the rules granted to the Commissioner "jurisdiction to refuse to approve . . . assignment by St. Louis to Milwaukee, and to declare [the player] absolved from the burdens of the same and of his contract with St. Louis."¹⁷⁰ In other words, the Commissioner could refuse the assignment of the player and nullify his contract, and the player would be a free agent.

Finally, the two teams argued that the Major League Agreement's issuance of broad jurisdiction to the Commissioner was against public policy because it attempted to deprive the court of its jurisdiction.¹⁷¹ The court responded that while it is common that "[a]n agreement to arbitrate a controverted question and to deprive all courts of jurisdiction, so long as in executory form," is void, "an actual submission to an arbiter or umpire in good faith is proper, and decision under same is binding unless it is unsupported by evidence, or unless the decision is upon some basis without legal foundation or beyond legal recognition."¹⁷²

2. *Atlanta National League Baseball Club, Inc. v. Kuhn*

A dispute which arose in 1976 brought up the issue of a Commissioner's ability to dispense punishment.¹⁷³ The team owners and the players had recently signed a new collective bargaining agreement which established free agency.¹⁷⁴ Bowie Kuhn, the Commissioner of Baseball at the time, repeatedly warned team owners not to negotiate with or make public comments about other teams' players until the players were free agents.¹⁷⁵ Disregarding Kuhn's warnings, Ted Turner, the owner of the Atlanta Braves, made public statements about his team having interest in a potential free agent from another team.¹⁷⁶ Kuhn subsequently suspended Turner from being involved in his team's operations for one year.¹⁷⁷ In addition, Kuhn stripped the Braves of its first round draft

169. *Id.*

170. *Id.*

171. *Id.* at 303.

172. *Id.*

173. *Atlanta Nat'l League Baseball Club, Inc. v. Kuhn*, 432 F.Supp. 1213 (1977).

174. *Id.* at 1215.

175. *Id.* at 1215-17.

176. *Id.* at 1217.

177. *Id.*

pick in the next baseball draft.¹⁷⁸ Then, the Atlanta Braves sued to enjoin Kuhn from carrying out his punishments.¹⁷⁹

The federal district court upheld Kuhn's authority to discipline Turner and the Braves for their actions.¹⁸⁰ However, the court did not allow Kuhn to take away a draft choice from the Braves.¹⁸¹ The court explained that despite the existence of a separate collective bargaining agreement (Basic Agreement) between the players and the owners concerning free agency, the Commissioner was authorized by his "best interests" power to regulate the process.¹⁸² The court explained that the Basic Agreement only adjusted the powers of the Commissioner to the extent needed to prevent the Commissioner from infringing on the rights granted to the parties by the agreement.¹⁸³ Additionally, the court explained that even though an arbitration panel existed for settling collective bargaining disputes, the Commissioner's ability to use his "best interests" power were not limited by the provision establishing the panel.¹⁸⁴

The Braves argued that the Commissioner could not issue directives because his "rulemaking authority [wa]s limited to procedural rules" under Article I, Section 2(d) of the MLA.¹⁸⁵ In other words, the Braves complained that the Commissioner could not make rules pertaining to the Basic Agreement. The court responded that Kuhn's directives were nothing more than "advance notice as to what acts will constitute forbidden conduct."¹⁸⁶ Additionally, the court held that even though there already existed tampering provisions in the Basic Agreement, Kuhn's directives, or advance notices pertaining to tampering, were valid because the directives were "not inconsistent" with the Basic Agreement provisions.¹⁸⁷

Turner and the Braves also argued that even if the Commissioner had the authority to issue the directives, Kuhn's decision on the directives and discipline of Turner was "contrary to the weight of the evidence and

178. *Id.*

179. *Id.* at 1218.

180. *Id.* at 1226.

181. *Id.*

182. *Id.* at 1220.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.* at 1221 (forbidden conduct meaning conduct not in the "best interests" of baseball).

187. *Id.*

that he abused his discretion."¹⁸⁸ In response to Turner's request to look into Kuhn's decision-making process, the court responded "[w]hat conduct is 'not in the best interests of baseball' is, of course, a question which addresses itself to the Commissioner, not this court."¹⁸⁹

On the other hand, the court held that the language of the MLA implies that the list of sanctions in Article I, section 3 is the exclusive form of punitive sanctions available to the Commissioner.¹⁹⁰ In addition, the court ruled that deprivation of a draft choice constituted a punitive sanction.¹⁹¹ Because deprivation of a draft choice was not one of the enumerated sanctions under Article I, Section 3, the court held that the Commissioner could not enforce such a punishment.¹⁹² The court suggested that for remedial or preventive actions, the Commissioner was not limited to the sanctions listed in Article I, Section 3.¹⁹³

3. *Charles O. Finley & Co. v. Kuhn*

A labor dispute between the owners and players culminated in the signing of a new Basic Agreement which created a free agency system.¹⁹⁴ Charles Finley, the owner of the Oakland Athletics, decided that he did not want to lose players to free agency for nothing.¹⁹⁵ The day before the trading deadline, Finley sold outfielder Joe Rudi and relief pitcher Rollie Fingers to the Boston Red Sox in exchange for \$1 million dollars each.¹⁹⁶ Soon thereafter, Finley sold Vida Blue to the New York Yankees for \$1.5 million dollars.¹⁹⁷ Upon hearing the news, Commissioner Kuhn was furious. Using the "best interests" clause of Article I, Section 2, Kuhn disapproved the assignments.¹⁹⁸ Finley sued the Commissioner, claiming Kuhn had no authority to disapprove the assignments because no Major League rules were broken and no moral

188. *Id.* at 1222.

189. *Id.*

190. *Id.* at 1225.

191. *Id.*

192. *Id.*

193. *Id.* at 1225-26.

194. *Id.* at 1215.

195. See HELYAR, *supra* note 24, at 192. Finley felt that when the season ended, the players on his team who were to become free agents would not remain with the team. Since there was little compensation for losing a free agent, Finley decided to get some value for these players. He decided to try and sell them for cash to the highest bidder. *Id.* at 183-88.

196. *Id.* at 185-86. After the trading deadline, a team cannot sell the contracts of a player without offering the player to all other teams in the League, in inverse order of their standing, at the stipulated waiver price of \$20,000. *Charles O. Finley & Co. v. Kuhn*, 569 F.2d at 535-40.

197. HELYAR, *supra* note 24, at 186.

198. *Charles O. Finley & Co. v. Kuhn*, 569 F.2d at 535-40.

turpitude was involved.¹⁹⁹ Additionally, Finley claimed that Kuhn's actions were "arbitrary and capricious."²⁰⁰

The trial court ruled in favor of the Commissioner, and on appeal, the Seventh Circuit Court of Appeals affirmed the trial court's judgment. The court reasoned that the "best interests" power gave the Commissioner broad power and that his authority to act under his preventive and remedial powers was not limited by the Article I, Section 3 list of punitive sanctions.²⁰¹

In determining that the Commissioner possessed broad power, the Court stated certain relevant factors that went into its decision:

In assessing the measure and extent of the Commissioner's power and authority, consideration must be given to the circumstances attending the creation of the office of Commissioner, the language employed by the parties in drafting their contractual understanding, changes and amendments adopted from time to time, and the interpretation given by the parties to their contractual language throughout the period of its existence.²⁰²

In particular, the court looked at the amendments to Article I, Section 2 of 1944 and 1964 and stated "[w]hen professional baseball intended to place limitations upon the Commissioner's powers, it knew how to do so."²⁰³

Regardless, Finley argued that the Commissioner did not follow proper procedures when he made his rulings.²⁰⁴ Specifically, Finley claimed that Kuhn did not give reasonable notice that he was going to take such an "abrupt departure from well-established assignment practice[s]."²⁰⁵

The Court responded:

that anyone becoming a signatory to the Major League Agreement was put on ample notice that the action ultimately taken by the Commissioner was not only possible but probable. The action was neither an "abrupt departure" nor a "change of policy" in view of the contemporaneous developments taking place in the reserve system, over which the Commissioner had little or no control . . .²⁰⁶

199. *Id.* at 531.

200. *Id.*

201. *Id.* at 535.

202. *Id.* at 532.

203. *Id.* at 537.

204. *Id.* at 536.

205. *Id.* (citation omitted).

206. *Id.* at 540.

Furthermore, the court stated that if the Commissioner acted in good faith, it should not review the validity of his actions. In support of this view, the court reasoned that:

baseball cannot be analogized to any other business or even to any other sport or entertainment. Baseball's relation to the federal anti-trust laws has been characterized by the Supreme Court as an "exception," an "anomaly" and an "aberration." Baseball's management through a commissioner is equally an exception, anomaly and aberration . . . In no other sport or business is there quite the same system, created for quite the same reasons and with quite the same underlying policies. Standards such as the best interests of baseball, the interests of the morale of the players and the honor of the game . . . are not necessarily familiar to courts and obviously require some expertise in their application. While it is true that professional baseball selected as its first Commissioner a federal judge, it intended only him and not the judiciary as a whole to be its umpire and governor.²⁰⁷

4. *Rose v. Giamatti*

Giamatti, using his investigative powers of Article I, Section 2, hired a special prosecutor to investigate allegations that Pete Rose was gambling on baseball.²⁰⁸ After the special prosecutor finished his investigation, Giamatti scheduled a hearing to discuss the investigation.²⁰⁹ Before the date came to pass, Rose sued Giamatti to enjoin him from holding the hearing.²¹⁰ Rose claimed that Giamatti had prejudged the case and had not followed the procedural guidelines of Article I, Section 2(e) in carrying out the investigation.²¹¹

The Court of Common Pleas of Ohio granted Rose a temporary restraining order.²¹² Giamatti then attempted to have the case heard in a federal district court.²¹³ A federal district court accepted jurisdiction to hear the case.²¹⁴ The case was eventually settled out of court.²¹⁵

207. *Id.* at 537 (citations omitted).

208. See HELYAR, *supra* note 24, at 402; *Rose v. Giamatti*, 721 F.Supp. 906 (S.D. Ohio 1989).

209. *Id.* at 403.

210. *Id.*

211. *Rose v. Giamatti*, 721 F.Supp. at 909. Art I, § 2(e) gives the Commissioner the power to create procedural rules which he must follow in carrying out his duties. MLA OF 1995 art. I, § 2(e) (1995).

212. *Rose v. Giamatti*, No. A8905178, 1989 Ohio Misc. Lexis 1 (Ct. C.P. June 25, 1989).

213. See *Rose v. Giamatti*, 721 F.Supp. at 909.

214. *Id.* at 923-24.

Significantly, the federal court did make a statement concerning the powers of the Commissioner:

[I]t is clear that with regard to disciplinary matters, the major league baseball clubs have made the Commissioner totally independent of their control. Under the Major League Agreement, the Commissioner's status with respect to disciplinary matters is analogous to that of an independent contractor, a person employed by Major League Baseball to act as an arbitrator and judge independent of any control by the members of Major League Baseball.²¹⁶

5. *Chicago National League Ball Club, Inc. v. Vincent*

On March 4, 1992, all the National League Teams, except the New York Mets and the Chicago Cubs, voted in favor of division realignment.²¹⁷ However, utilizing a veto provision in the National League Constitution, the Chicago Cubs prevented the realignment.

Nevertheless, Commissioner Fay Vincent ordered the realignment, citing his "best interests" power as authority. The Cubs sought an injunction preventing Vincent from transferring the Cubs into a different division. The Cubs argued that the Commissioner had exceeded the powers granted to him under the MLA.

Specifically, the Cubs argued that the Commissioner was not authorized to act as arbitrator under Article V on the realignment issue because there was another express means for resolution, specifically the voting provisions in the National League Constitution. Vincent argued that he was not acting as arbitrator and, thus, was not bound by Article V's language. Rather, he claimed authority to act under the "best interests" power.

The U.S. District Court for the Northern District of Illinois granted the preliminary injunction against Vincent. Judge Conlan, who heard the motion, stated that "the Commissioner's authority to investigate 'Acts,' 'transactions' and 'practices' and to determine and take 'preventative, remedial or punitive action' does not encompass restructuring the divisions of the National League. There has been no conduct [or misconduct] for the Commissioner to investigate, punish or remedy under Article I."²¹⁸

215. Rose agreed to accept the punishments set out by Giamatti, and, thus, the case was dropped.

216. *Id.* at 919.

217. *Chicago Nat'l League Ball Club, Inc. v. Vincent*, No. 92 c4398 (N.D. Ill. 1992).

218. *Id.*

In addition, Judge Conlan stated that the veto exercised by the Cubs was a continuation of traditional divisional placements as seen in the National League Constitution.

Before the appeal could be heard, Vincent resigned and the matter of division realignment was dropped by the rest of the National League teams.

B. Broad Interpretation

1. Uniqueness of the Game of Baseball and the Commissioner's Management Role

Professional baseball has characteristics unlike any other business. In most businesses, a company benefits when its competitors go bankrupt. However, a baseball team cannot survive if it has no competition. Additionally, professional baseball teams derive a majority of their income from television, licensing and other joint activities. Finally, due to salary arbitration, a baseball team must pay its employees the same amount of money as its competitors pay their employees, even if its competitors do not desire a particular employee's services.

In this unique business, the Commissioner has unique management responsibilities that differ greatly from that of other Chief Executive Officers. For example, a CEO of a company can fire its employees, whereas the Commissioner of Baseball has little say over who is a professional ballplayer.

Because the Commissioner has unique responsibilities of running a unique business, a greater amount of latitude should be given to the Commissioner's use of his authority than would otherwise be given a CEO of a normal business association.

The Supreme Court has supported the unique nature of the Commissioner's role. The Supreme Court upheld baseball's antitrust exemption on the grounds that baseball has "unique characteristics and needs."²¹⁹

In *Finley*, the court expressed this same view in its response to the Plaintiff's argument that the Commissioner's actions must follow due process.²²⁰ Specifically, the court stated that:

baseball cannot be analogized to any other business or even to any other sport or entertainment. Baseball's relation to the fed-

219. *Flood v. Kuhn*, 407 U.S. 258, 282 (1972); *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356 (1953). See also *Federal Baseball Club of Baltimore v. National League*, 259 U.S. 200 (1922).

220. *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 537 (7th Cir. 1978).

eral antitrust laws has been characterized by the Supreme Court as an "exception," and "anomaly" and an "aberration." Baseball's management through a commissioner is equally an exception, anomaly and aberration . . .²²¹

2. The Complexity of Baseball Culture

In addition, baseball has a unique culture that is difficult to govern. Only in baseball is a leader's authority based on a "best interests" concept. One could argue that only a person experienced with the culture can truly understand the nuances of governing baseball. The Commissioner is believed to have this special experience. Therefore, it follows that the Commissioner should be given wide latitude in governing — his interpretation of a rule like the "best interests" power should be respected because he is in the best position to interpret such a rule.

In *Finley*, the court discussed the unique nature of baseball culture, the difficulty of interpreting parts of the Major League Agreement, and the need for an expert to interpret this document.²²² Specifically, the court stated "[s]tandards such as the best interests of baseball, the interests of the morale of the players and the honor of the game, or 'sportsmanship which accepts the umpire's decision without complaint,' are not necessarily familiar to courts and obviously require some expertise in their application."²²³

The *Finley* court further explained its reluctance to examine the decisions of a Commissioner because doing so "would involve the courts in not only interpreting often complex rules of baseball to determine if they were violated but also, as noted in the *Landis* case, the 'intent of the [baseball] code,' an even more complicated and subjective task."²²⁴

The *Finley* court's approach of not reviewing the content of the Commissioner's decision was also the approach taken in the *Atlanta Braves* case. The *Atlanta Braves* court stated "[w]hat conduct is 'not in the best interests of baseball' is, of course, a question which addresses itself to the Commissioner, not this court."²²⁵

221. *Id.* at 537 (citations omitted).

222. *Id.*

223. *Id.*

224. *Id.* at 539.

225. *Atlanta Nat'l League Baseball Club, Inc. v. Kuhn*, 432 F.Supp. 1213, 1222 (1977).

3. Breadth of the "Best Interests" Clause and the Absence of Express Limitation

The scope of the "best interests" clause is broad on its face and the nonexistence of any limiting clauses in the MLA suggests that the Commissioner has broad powers under the clause. In other words, a literal interpretation of the MLA indicates that there should be a broad reading of the Commissioner's powers, absent any expressly limiting language.

In *Finley*, the court stated that one of the main factors in deciphering a contract's meaning is the language used by the parties in the contract.²²⁶ Additionally, the court in *Milwaukee American* stated that the MLA "disclose[s] clear intent upon the part of the parties to endow the commissioner with all the attributes of a benevolent but absolute despot and all the disciplinary powers of the proverbial pater familias."²²⁷

Concerning the "best interests" power of the Commissioner, the court in *Milwaukee American* stated that "the provisions are so unlimited in character that we can conclude only that the parties did not intend so to limit the meaning of conduct detrimental to baseball . . ."²²⁸

However, the language of Article I, Section 2 in the *Milwaukee American* case is different than the current language. In *Milwaukee American*, the clause contained the phrase "detrimental to the best interests" of Major League baseball, whereas the current provision uses the language "not in the best interests" of Major League baseball.²²⁹

The court in *Atlanta Braves* similarly interpreted the current "best interests" clause to be read broadly when it stated that "[t]he Commissioner has general authority, without rules or directives, to punish both clubs and/or personnel for any act or conduct which, in his judgment, is 'not in the best interests of baseball' within the meaning of the Major League Agreement."²³⁰

In *Finley*, the court stated that "[t]he Commissioner has been given broad power in unambiguous language . . ."²³¹ The court further discussed the amendments made by the Major League owners when Commissioner Landis died in 1944.²³² In 1914, the MLA was amended to

226. *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 532 (7th Cir. 1978).

227. *Milwaukee Am. Ass'n. v. Landis*, 49 F.2d 298, 299 (N.D.Ill. 1931), *appeal dismissed*, 61 F.2d 1036 (7th Cir. 1931).

228. *Id.* at 302.

229. MLA OF 1921 art. I, § 2 (1921); MLA OF 1995 art. I, § 2 (1995).

230. *Atlanta Nat'l League Baseball Club, Inc. v. Kuhn*, 432 F.Supp. 1213, 1222 (1977).

231. *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 534 (7th Cir. 1978).

232. *Id.*

include a limiting clause to the "best interests" power that stated "[n]o Major League rule or other joint action of the two Major Leagues and no act or procedure taken in compliance with any such Major League rule or joint action of the two Major Leagues shall be considered or construed to be detrimental to baseball."²³³

The *Finley* court concluded that these amendments showed that the owners knew how to limit the powers of the Commissioner.²³⁴ The court added that the subsequent removal of this amendment was evidence of the owners intentions to grant the Commissioner broad use of his "best interests" power.²³⁵ The Court further acknowledged that existence of the covenant not to sue was proof of the intentions of the owners to provide the Commissioner with broad power.²³⁶

4. Intentions of the Original Signatories to the MLA

In 1921, the team owners drafted the Major League Agreement. As discussed earlier, during the drafting process and final signing of the contract, the owners recorded most of the discussions that occurred between each other and Landis. These transcripts showed that the original signatories expected the Commissioner to have absolute authority.²³⁷

In particular, during the final drafting session, the owners added a clause that would have prevented the Commissioner from suspending or removing a club or league official or employee. Instead, the clause only authorized the Commissioner to recommend suspension or removal of aforementioned parties. Landis's response made it clear, however, that he would not accept the position if the clause was not removed from the contract:

There had grown up in baseball certain evils which were not limited to bad baseball players; that men who never handled the ball but men who controlled ball clubs in the past have been guilty of various offenses, and that you gentlemen recognized that fact and you had made up your minds the time had come for a situation to be created where somebody would be given authority, if I may [p]ut it brutally, to save you from yourselves . . . Accordingly, we met at New York . . . and we drew up a tentative agreement for

233. MLA of 1945 (1945).

234. *Charles O. Finley & Co. v. Kuhn*, 569 F.2d at 537.

235. *Id.* at 539.

236. *Id.* at 543.

237. Joint Meeting of the National League and American League owners and representatives (Jan. 12, 1921) (Tr. at 1-17).

the Major Leagues, and it provided for authority to be exercised by the Commissioner . . .

[Y]ou gentlemen had finally concluded that there should be developed by the spoken word, the written word, a commission having power to deal with whatever evil came up in your game.²³⁸

Needless to say, the clause was withdrawn and the owners believed they were giving Landis the powers he requested. Some people would argue that weight should be given to the original intentions of the parties. The court in *Finley* acknowledged this view when it stated that "consideration must be given to the circumstances attending the creation of the office of Commissioner."²³⁹

5. Prior Practices That Have Gone Unchallenged

Another, less plausible argument for granting the Commissioner broad power under the "best interests" clause is the past exercise of power by Commissioners that have gone unchallenged. In *Finley*, the court stated that one of the factors in interpreting the breadth of the Commissioner's powers was "the interpretation given by the parties to their contractual language throughout the period of its existence."²⁴⁰

The court in *Finley* acknowledged that in many instances, both Landis and Kuhn had exercised their "best interests" power in matters not related to moral turpitude or violations of the Major League Rules. The court further acknowledged that both men had "taken broad preventive or remedial action with respect to assignments of player contracts."²⁴¹

However, in the same case, two of the three judges stressed that they did not give any particular weight to what the current parties' beliefs were concerning the original intent of the signatories to the MLA.²⁴² Additionally, the court in *Atlanta Braves*, responding to cited examples when the Commissioner's actions went unchallenged, stated that the fact that "the Commissioner's authority in those cases went unchallenged does not persuade this court of the Commissioner's unlimited punitive powers in light of contractual language and established rules of construction to the contrary."²⁴³

238. See *supra* note 124.

239. Charles O. Finley & Co. v. Kuhn, 569 F.2d at 532.

240. *Id.*

241. *Id.* at 537.

242. *Id.* at 545-46.

243. Atlanta Nat'l League Baseball Club, Inc. v. Kuhn, 432 F.Supp. 1213, 1226 (1977).

C. Narrow Interpretation

1. Language Inferred From the MLA

On the other hand, there are a few arguments that can be raised against having a broad interpretation of the Commissioner's "best interests" power. One argument is that the language of the clause constrains itself. Article I, Section 2(b) reads as follows: "any act, transaction or practice charged, alleged or suspected to be not in the best interest of baseball . . ."²⁴⁴

It can be argued that the language of the clause expressly limits the Commissioner to negative uses of his "best interests" power. In other words, the argument is that the Commissioner can only use his "best interests" power when something specific has occurred or is about to occur.

Recently, the district court in *Chicago Cubs* took this viewpoint and enjoined Commissioner Vincent from exercising his "best interests" power to order divisional realignment in the National League.²⁴⁵ Specifically, Judge Conlon stated:

Giving the language of Article I its common sense and ordinary meaning, the Commissioner's authority to investigate "acts," "transactions" and "practices" and to determine and take "preventive, remedial or punitive action" does not encompass restructuring the divisions of the National League. There has been no conduct [or misconduct] for the Commissioner to investigate, punish or remedy under Article 1.²⁴⁶

According to this reasoning, the ordinary meaning of the clause does not grant the Commissioner power to take affirmative actions, such as ordering realignment. However, if a Commissioner wanted to take an affirmative action, all he would have to do is phrase his actions in the negative.

For example, imagine a situation where the Commissioner wanted to use his "best interests" power to order inter-league play. In addition, assume that one of the television networks would be willing to pay a great amount of money for the rights to show baseball games if there was interleague play. Under current voting requirements, it would take a three-fourths vote by the teams to have inter-league play. If a majority of the owners, but not three-fourths, voted for the plan it would still be

244. MLA of 1995 art. I, § 2(b) (1995).

245. *Chicago Nat'l League Ball Club, Inc. v. Vincent*, No. 92 c4398, at 11-13 (N.D.Ill. 1992).

246. *Id.* at 11.

rejected. Assuming baseball's current financial woes, if a Commissioner wanted he could simply state that he was using his "best interests" power and ordering inter-league play in order to prevent the financial destruction of baseball. Since the Commissioner would be using his powers in a preventative manner, specifically to prevent the destruction of baseball, logic dictates that he could accomplish his goal. In the end, more importance would be placed on form rather than substance.

2. Inferences from Other MLA Articles

In addition, even if limitations are not read directly from the Commissioner's "best interests" power contained in Article I, Section 2(b), limitations can be inferred from the language of other Articles in the MLA. In contract law there is a concept called the canons of construction. One principle of these canons is that "specific terms and exact terms are given greater weight than general language[.]"²⁴⁷

In Article VII, Section 1 of the MLA, there is a clause that requires any dispute between the Major League Teams to be submitted to the Commissioner, who then acts as arbitrator in the matter. However, the clause has an exception for disputes whose resolution is expressly provided for by other means.

Whereas Article I, Section 2 is not clearly defined, Article VII, Section 1 is clear on the Commissioner's authority to deal with disputes between Major League Teams. According to the canons of construction, the provision in Article VII, Section 1 would supersede the "best interests" clause in Article I, Section 2.

The Chicago Cubs used this exact argument in its lawsuit against Fay Vincent to show that the Commissioner did not have the authority to order division realignment.²⁴⁸ In his appeal brief, Vincent argued that the other Articles of the Major League Agreement did not supersede the "best interests" authority but augmented it.²⁴⁹ The crux of Vincent's argument was that if the other Articles limited the Commissioner's "best interests" power, the "best interests" power would be severely eroded.

The Cubs countered that if the "best interests" clause were as broad as Vincent claimed, there would be no need for the other Articles to augment the Commissioner's "best interests" power. The "best inter-

247. RESTATEMENT (SECOND) OF CONTRACTS § 203(c) (1981).

248. *Chicago Nat'l League Ball Club, Inc. v. Vincent*, No. 92 c4398 at 4-7.

249. Defendant's Appellate Brief at 18, *Chicago Nat'l League Ball Club, Inc. v. Vincent*, No. 92 c4398 at 4-7.

ests" clause would be unlimited in scope and it is impossible to broaden an unlimited clause.²⁵⁰

The *Atlanta Braves* court declared that the breadth of the "best interests" clause was not unlimited.²⁵¹ Specifically, the court held that the list of punitive sanctions in Section 3 of Article I limited the Commissioner's power to punish under the "best interests" clause.²⁵²

3. Intentions of the Original Signatories to the MLA

An argument can be made that the clubs did not intend the Commissioner to have unlimited powers to use his "best interests" authority because the original owners could never have intended that the Commissioner would be able to completely change the structure of baseball.

The difficulty with this argument is that the original signatories probably never conceived of a Commissioner trying to alter the structure of baseball. The fact is that they did not expressly mention in the MLA that they considered the issue.

The owners went to great lengths to establish the structure of baseball. It seems extremely unlikely that those owners ever intended for a Commissioner to be able to undo the work that they so diligently put forth.

4. Due Process Constraints

A final argument put forth by the courts is that the Commissioner's use of his "best interests" authority must be in accord with basic procedural fairness.

In *Finley*, the court stated that "the basic rudiments of due process of law" must be followed.²⁵³ However, by "due process" the court was not speaking of Constitutional Due Process, but fairness in the interpretation of the MLA.

Similar to the author's interpretation of *Finley*, the court in *Landis* stated that the Commissioner's "best interests" power "may not be exercised in an illegal manner, that is fraudulently, arbitrarily, without legal basis for the same or without any evidence to justify action."²⁵⁴

250. Plaintiff's Appellate Brief at 35. *Id.*

251. *Atlanta Nat'l League Baseball Club, Inc. v. Kuhn*, 432 F.Supp. 1213, 1224-25 (1977).

252. *Id.*

253. *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 544 (7th Cir. 1978).

254. *Milwaukee Am. Ass'n v. Landis*, 49 F.2d 98, 303 (N.D.Ill. 1931), *appeal dismissed*, 61 F.2d 1036 (7th Cir. 1931).

In *Atlanta Braves*, the court examined Commissioner Kuhn's differing punishments to the Atlanta Braves and the St. Louis Cardinals for the same offense of tampering.²⁵⁵ The court stated that Kuhn was justified in punishing the Braves more than the Cardinals because the Braves had committed a prior offense and had been warned more times than the Cardinals.²⁵⁶ The fact that the court examined the issue of fairness implies that if the court did not find a justification for the disparaging punishments, it would have found that Kuhn acted arbitrarily and held that the Commissioner was not authorized to use his "best interests" power in such a manner.

The *Rose* case was based on allegations that the Commissioner did not "follow his own procedural rules in conducting the investigation of Rose's alleged gambling activities."²⁵⁷ In that case, the Ohio court issued a temporary restraining order based on the allegations brought by Rose.²⁵⁸

Although a court has never overturned a Commissioner's decision based on procedural fairness, a court would probably overrule a Commissioner's decision if it believed that he did not follow procedural fairness. Therefore, a Commissioner's "best interests" power may be limited by procedural fairness.

D. Resolution

The courts have not settled the issue of how the Commissioner's "best interests" power should be interpreted. Yet, the MLA amendments of 1994 may have made the question moot because under the current MLA, the Commissioner's "best interests" power are very broad. Nevertheless, the author will discuss this issue using the 1993 version of the MLA.

The language of the "best interests" clause of Article I, Section 2 does not contain any express limiting language. The clause implies that the Commissioner is only authorized to negative uses of his "best interests" power. However, it is easy for a Commissioner to phrase an affirmative use of his "best interests" power in the negative. Thus, this inference does not appear to limit the Commissioner.

On the other hand, there are limits to the Commissioner's powers. The court in *Atlanta Braves* stated that the enumerated list of sanctions

255. *Atlanta Nat'l League Baseball Club, Inc. v. Kuhn*, 432 F.Supp. 1213, 1223 (1977).

256. *Id.*

257. *See Rose v. Giamatti*, 721 F.Supp. 906, 918 (S.D. Ohio 1989).

258. *Id.* at 908.

in Article I, Section 3 contains the only punitive choices available to the Commissioner. Yet, even with these limited punitive choices, the Commissioner still has the power to punish an act or procedure. Therefore, such a limitation seems minor. Additionally, the court in *Finley* held that this list does not restrict the Commissioner's choice when his actions are remedial or preventative in nature.

The canons of construction argument made above is plausible, in that the more specific sections of the MLA supersede the less specific "best interests" power. As the court in *Chicago Cubs* declared, the Commissioner cannot act as an arbitrator when dispute resolution is expressly provided for by other means. However, the power to act as an arbitrator is not the main source of the Commissioner's power. This limitation is also minor in nature and barely affects the Commissioner's overall authority.

The court in *Finley* implies that the Commissioner is bound by procedural fairness considerations. Thus far, the courts have suggested that procedural fairness is followed, as long as the Commissioner does not act in an arbitrary and capricious manner. Once the courts have found that the Commissioner's actions were reasonable, they have refused to question the logic of his decisions.

In conclusion, there are a few minor limits on the Commissioner's "best interests" power. Overall, there is little that the Commissioner cannot substantively do under his "best interests" power, provided he phrases the order in the negative and does not violate procedural fairness guidelines.

V. CONCLUSION: AN ALTERNATIVE MODEL OF THE COMMISSIONER'S OFFICE

A. *Problems with the Commissioner's Role*

As stated earlier, the original signatories to the MLA created the Commissioner to act as the moral protector of baseball. However, over time, the creation of radio and television created financial concerns that did not exist in 1921 when the Commissioner's office was created.²⁵⁹ Initially, the Commissioners were not empowered to handle the changing financial conditions in baseball. When the owners began authorizing the Commissioners' involvement in the financial matters of the game, the owners found that some of the Commissioners, like Fay Vincent, were not qualified to handle their responsibilities. Following Commissioner

259. See *supra* part III.G.

Vincent's term in office, the owners have increased the Commissioner's role to include greater involvement in the business affairs of baseball.²⁶⁰

However, it is dangerous to grant a substantial amount of power to the Commissioner, who has a smaller financial interest in baseball than the owners. The Commissioner has many conflicting roles. The Commissioner serves the owners' interests and chairs various owners' committees, including the committees that negotiate television and labor contracts. At the same time, the Commissioner must serve the players' interests in employment and financial matters, not to mention keeping the public satisfied with the game of baseball. Conflicts are inevitable, and this type of power in the hands of one person can lead to harmful results.

1. Executive Council

In the absence of a Commissioner, the Executive Council is a dynamic body empowered to handle both business and moral matters in baseball. The National Commission, which preceded the Commissioner's office, was a model similar to that of the Executive Council.²⁶¹ Both were made up of team owners with one owner serving as the head figure.

However, in the end, the Executive Council would probably fail as a governing body for many of the same reasons why the National Commission failed. The National Commission failed because the owners in each League accused the Commission of being controlled by the other League. Every decision that the Commission made led to more disenchantment among the owners towards the Commission.²⁶²

The Executive Council would eventually run into insurmountable conflicts. Eventually, teams not represented on the Council would feel that their particular interests did not matter. In addition, at some point the Council would have to handle an issue that directly affected the interests of the Council members. Conflicts of interest would arise that would ultimately jeopardize the integrity of the Council. Eventually, the competitive nature of the owners would lead to its downfall.

Another reason why the Council would not work is because the responsibilities of the members would require an owner to serve as a full-time employee. However, the owners have their own teams to run and other businesses to run as well. Simply put, most if not all owners do not

260. See *supra* part III.F.

261. See *supra* part I.B.

262. See *supra* part I.C.

have the time to run the office. Given the choice, the owners most likely do not want the day-to-day responsibility of governing the affairs of baseball.

B. Two Commissioners

The Commissioner's duties are broken down into two parts: protector of the moral integrity of baseball and the CEO of baseball. In the past the owners sought Commissioners that they believed could maintain the moral integrity of baseball. The Commissioner, at one time, did not have many business responsibilities and could utilize most of his time protecting the image of baseball. For the most part the owners have been satisfied with the Commissioner's role as "moral protector" of baseball.

However, the owners have not been pleased with the overall performances of the Commissioners when it comes to the business aspect of baseball. It has been difficult for the owners to find a person who can protect the moral integrity of the game and, at the same time, successfully run the business affairs of the game.

One alternative model could be the creation of a two Commissioner office, where the position is broken up into two distinct roles. One individual would function as the "business" Commissioner and the other would be the "integrity" Commissioner.

The advantage of this system is that owners could separate the rigorous responsibilities required of only one Commissioner. Broadly speaking, the "business" Commissioner would serve the concerns of the owners and the owners' interests only. These issues would include the various committees involving the player's association, labor contracts and arbitration. At the same time, the "integrity" Commissioner could address the distinct problems associated with the image of baseball. This person would not necessarily have to answer to the owners' concerns, but more to the public's concerns. In such a system, the owners could alleviate the various conflicts of interest problems that one Commissioner usually faces. Two Commissioners with clearly defined roles could improve the efficiency of the office.

However, there are some disadvantages to such a system. The reduced prestige of being one of two Commissioners might cause difficulties for the owners in finding qualified persons. Furthermore, two Commissioners raises the possibility of further conflicts. While it is plausible that their roles could be differentiated, issues could certainly arise that both would feel was their exclusive responsibility. Alternatively, personality conflicts may make the office less efficient and cause further

tension in baseball matters. Along the same lines, one Commissioner could be regarded as more important than the other, resulting in favoritism and non-productive feuds.

The owners should consider this proposal and other alternatives in regard to the Commissioner's role for the future. Whether this role will remain the same or drastically change, it is clear that the Commissioner's Office at least has the dual responsibility of governing the big business of Major League Baseball and weaving its moral character.

